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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 JUSTIN SUAREZ on behalf of himself and all others similarly situated, 12 Plaintiffs, vs. 13 INTEL CORPORATION, a Delaware corporation, 14 Defendants.	CASE NO. CLASS ACTION COMPLAINT
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15 Plaintiff Justin Suarez ("Plaintiff") brings this action individually and on behalf of
 16 all other individuals and/or entities ("persons") similarly situated. The Class that
 17 Plaintiff seeks to represent consists of all persons who indirectly purchased x86
 18 microprocessor chips produced by Intel Corporation ("Intel") including end-products
 19 such as personal computers (PC) incorporating such microprocessors during the
 20 Class period, as defined below. Plaintiff, by its attorneys, complains of the
 21 Defendant, upon information and belief, except those paragraphs that allege personal
 22 knowledge as follows:
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INTRODUCTION

2 1. Pursuant to 28 U.S.C. section 1332 (d), Plaintiff brings this action as a
3 Nationwide Class Action under California law on behalf of all "persons," as defined in
4 California Business & Professional Code ("Cal. Bus. & Prof. Code") section 16702,
5 who indirectly purchased Intel x86 microprocessor chips, including those who
6 purchased end-products such as personal computers ("PC") containing such Intel
7 microprocessor chips for their own use and not for re-sale, and a thereby paid
8 artificially high supra-competitive prices as a result of Intel's anti-competitive conduct.

9 2. Intel holds a monopoly in microprocessors that run the Microsoft
10 Windows and Linux families of operating systems (hereinafter the "x86
11 Microprocessor Market"). Intel possesses market power, with its microprocessor
12 revenues accounting for approximately 90% of the worldwide total dollar of
13 microprocessor sales (and 80% of the microprocessor units sold).

14 3. For over a decade, Intel has unlawfully maintained its x86
15 microprocessor monopoly by engaging in a relentless campaign to coerce customers
16 to refrain from dealing with its competitors. Among other things,

17 • Intel has forced major customers into exclusive or near-exclusive deals;
18 • Intel has conditioned rebates, allowances, and market development
19 funding on its customers' agreement to severely limit or forego entirely purchases
20 from Intel's competitors:

21 • Intel has established a system of discriminatory, retroactive, first-dollar
22 rebates triggered by purchases at such high levels as to have the practical and
23 intended effect of denying its customers the freedom to purchase any significant
24 volume of microprocessors from Intel's competitors;

25 • Intel has threatened retaliation against customers, particularly in
26 strategic market segments;

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- Intel has established and enforced quotas among key retailers effectively requiring them to stock overwhelmingly, if not exclusively, Intel-powered computers, thereby artificially limiting consumer choice;

4 • Intel has forced PC makers and technology partners to boycott Intel's
5 competitors' product launches and promotions; and

6 • Intel has abused its market power by forcing on the industry technical
7 standards and products in a manner which has, as its central purpose, the
8 handicapping of its competitors in the marketplace.

9 4. End-users or consumers, including Plaintiff and the other members of
10 the Class, have been damaged by Intel's unlawful conduct in the form of supra-
11 competitive prices for personal computers and other products containing
12 microprocessors resulting from Intel's raising and fixing of the prices of its
13 microprocessor chips incorporated therein, and the loss of freedom to purchase
14 computer products and other products that best fit their needs.

JURISDICTION

16 5. This Court has jurisdiction pursuant to 28 U.S.C. section 1332(d), as the
17 amount of controversy exceeds the sum or value of \$5 million, exclusive of interest
18 and costs, and there is a diversity of citizenship between Defendant and Members of
19 the Class as the Class consists of persons of all 50 states.

VENUE

21 6. Venue is proper in this Court pursuant to 28 U.S.C. section 1331(a)
22 because Intel conducts business in San Diego County, is subject to personal
23 jurisdiction in San Diego County, and the acts and transactions given rise to the
24 violations complained of herein, and the Classes' damages, occurred in substantial
25 part in this county. Venue is also proper pursuant to Cal. Bus. & Prof. Code section
26 16750(a) because Intel is found, or its agent resides or is found, in San Diego County,
27 and service may be obtained there.

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PARTIES

2 7. Plaintiff Justin Suarez is a resident of San Diego, California who
3 purchased a Dell Inspiron 8600 laptop computer in San Diego containing an Intel
4 Centrino microprocessor chip in approximately March 2004, for his own use and not
5 for re-sale, paying a supra-competitive price as a result of Intel's conduct as alleged
6 herein and was thereby injured in his business or property.

7 8. Defendant Intel Corporation is a Delaware corporation with its principal
8 place of business in Santa Clara, California. At all times relevant hereto, Intel was
9 engaged, either individually or with others, in the business of manufacturing,
10 marketing or selling Intel x86 Microprocessor Chips to the public throughout the
11 United States and within the State of California.

AGENCY, JOINT VENTURE, ALTER EGO AND CO-CONSPIRATORS

13 9. Intel acted as the agent, joint venturer, alter ego, or co-conspirator of or
14 for the others both known and unknown, with respect to the acts, violations, and
15 common course of conduct alleged herein.

16 10. The acts charged in this Complaint as having been accomplished by
17 Defendant or its agents, joint venturers, alter egos, or co-conspirators were
18 authorized, ordered, ratified or accomplished by their officers, agents, employees, or
19 representatives, while actively engage in the management of the Defendant's
20 business or affairs.

CLASS ACTION ALLEGATIONS

22 11. Plaintiff brings this action as a class action, pursuant to Rules 23(a) and
23 (b) (3) of the federal rules of Civil Procedure. The Class that Plaintiff seeks to
24 represent is defined as:

25 All persons residing in the United States who purchased
26 Intel x86 microprocessor chips, indirectly from defendants,
27 including end-products such as personal computers
28 containing such Intel x86 microprocessor chips in the
United States for their own use and not for resale from
January 1, 1997, through the date of Class Notice
(hereinafter "Class Period"). Specifically excluded from the

Plaintiff Class is the defendant herein; officers, directors, or employees of the defendant; any entity in which the defendant has a controlling interest; the affiliates, legal representatives, attorneys, heirs or assigns of the defendant. Also excluded are any federal, state or local governmental entities. Further excluded are any judge, magistrate judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staffs.

6 12. Applying California law and, in particular, California's Cartwright Act, Cal.
7 Bus. & Prof. Code §16700, et seq., to Intel's conduct in this matter on behalf of a
8 Nationwide Class is neither arbitrary nor fundamentally unfair. Intel has its principal
9 of place of business in California and the conduct described herein was directed from
10 California. Moreover, one of the primary targets of Intel's anticompetitive practices,
11 and its rival, AMD, who revealed Intel's anti-competitive conduct is also located in
12 California. California is also the center of the PC industry in the United States and
13 California consumers represent a disproportionately high percentage of the Plaintiff
14 Class; it is believed that as much as 20-25% of all PC related transactions within
15 United States take place, in substantial part, in California. As such, California has a
16 significant state interest in applying its law to Intel's wrongful conduct. See Phillips
17 Petroleum Co. v. Shutts, 472 U.S. 797 (1985).

A. Numerosity

19 13. The Members of the Class are so numerous that joinder of all members
20 is impracticable. Plaintiff is informed and believes, based upon the nature and
21 amount of trade and commerce in x86 microprocessors, and thereon alleges that
22 there are millions of Members of the Nationwide Class.

B. Typicality

24 14. Plaintiff's claims are typical of the claims of the members of the Plaintiff
25 Class because Plaintiff and each Member of the Plaintiff Class purchased, indirectly,
26 Intel x86 microprocessor chips for their own use and not for resale, paying supra-
27 competitive prices and suffering injury thereby as a result of Defendant's common
28 course of conduct in violation of law as alleged herein.

C. Adequacy of Representation

2 15. Plaintiff will fairly and adequately protect the interests of the members of
3 the Plaintiff Class. Plaintiff resides in California, is an indirect purchasers and end-
4 user of an Intel x86 microprocessor chip and indirectly purchased, in California, an
5 Intel x86 microprocessor chip in a PC during the Class Period for his own use and not
6 for resale, and thus is an adequate representative of the Plaintiff Class. Plaintiff has
7 no interests that are adverse to the interests of absent class members. Plaintiffs have
8 retained counsel with substantial experience in the prosecution of complex class
9 action antitrust and consumer protection litigation.

D. Superiority

11 16. A class action is superior to other available means for the fair and
12 efficient adjudication of this controversy since individual joinder of all members of the
13 Plaintiff Class is impracticable. Class action treatment will permit a large number of
14 similarly situated persons to prosecute their common claims in a single forum
15 simultaneously, efficiently, and without the unnecessary duplication of effort and
16 expense that numerous individual actions would engender. Furthermore, as the
17 monetary injuries suffered by each individual member of the class may be relatively
18 small, the expenses and burden of individual litigation would make it difficult or
19 impossible for members to individually redress the wrongs done to them.
20 Additionally, an important public interest will be served by addressing the matter as a
21 class action. The cost to the court system of adjudication of such individualized
22 litigation would be substantial. Individualized litigation would also present the
23 potential for inconsistent or contradictory judgments.

E. Manageability

25 17. Plaintiff is unaware of any difficulties that are likely to be encountered in
26 the management of this action that would preclude its maintenance as a class action
27 as plaintiff seeks the application of the law of a single state.

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E. Common Questions of Law and Facts

2 18. Common questions of law and fact exist with respect to all Members of
3 the Class and predominate over any questions effecting solely individual members of
4 the Class. Among the common questions of law and fact, are the following:

5 (a) Whether defendant formed and operated an illegal trust in
6 restraint of trade in x86 microprocessors within the Class Period;

10 (c) Whether defendant engaged in exclusive dealing sales or
11 contracts, agreements or understandings that might substantially lessen competition
12 or tend to create a monopoly in x86 microprocessor chips within the State of
13 California and the United States within the Class Period;

17 (e) Whether Plaintiff and the Plaintiff Class sustained antitrust injury
18 as a result of defendant's conduct within the Class Period;

(f) The appropriate amount and/or measure of damages; and

20 (g) The appropriate nature of class wide equitable relief.

21 19. Further, Defendant has acted on grounds generally applicable to the
22 entire Class, thereby making final injunctive relief and ancillary equitable relief
23 appropriate with respect to the Class as a whole.

FACTUAL BACKGROUND

25 20. Intel's largest competitor, AMD, set forth much of the history and
26 anticompetitive conduct by Intel in its complaint filed on or about June 27, 2005:

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1 *Early History*

2 21. The brain of every computer is a general-purpose microprocessor, an
3 integrated circuit capable of executing a menu of instructions and performing
4 requested mathematical computations at very high speed. Microprocessors are
5 defined by their instruction set – the repertoire of machine language instructions that
6 a computer follows. So, too are computer operating systems – software programs
7 that perform the instructions in the set allowing the computer to perform meaningful
8 tasks. The first generation of microprocessors, which were capable of simultaneously
9 handling 4 and then later 8 bits of data, evolved to provide 16-bit capability (the
10 original DOS processors), then sometime later a 32-bit capability (allowing the use of
11 advanced graphical interfaces such as later versions of the Microsoft Windows
12 operating system), and now 64-bit capability.

13 22. When IBM defined the original PC standards in the early 1980s, it had
14 available to it a variety of microprocessors, each with its own instruction set. Among
15 those were microprocessors developed by Motorola, Zilog, National Semiconductor,
16 Fairchild, Intel, and AMD. IBM opted for the Intel architecture, which utilized what
17 became known as the x86 instruction set (after Intel's naming convention for its
18 processors, i.e., 8086, 80186, 80286, 80386), and a compatible operating system
19 offered by Microsoft, known as DOS.

20 23. Unwilling to be consigned to a single source of supply, however, IBM
21 demanded that Intel contract with another integrated circuit company and license it to
22 manufacture the x86 chips as a second source. AMD, which had worked with Intel
23 before in supplying microprocessors, agreed to abandon its own, competing
24 architecture, and undertook to manufacture x86 chips as a second source of supply
25 for IBM. Assured that it would not be dependent upon a monopoly supplier of x86
26 chips, IBM introduced the PC in August 1981 – and its sales of those computers
27 exploded.

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1 24. Although an arbitrator later found that "AMD's sponsorship helped propel
2 Intel from the chorus line of semiconductor companies into instant stardom," Intel
3 soon set out to torpedo the 1982 AMD-Intel Technology Exchange Agreement (the
4 "Agreement") by which each would serve as a second source for products developed
5 by the other. For example, Intel was required by the Agreement to send AMD timely
6 updates of its second generation 80286 chip. Instead, in a "deliberate" effort "to
7 shackle AMD's progress," Intel sent AMD information "deliberately incomplete,
8 deliberately indecipherable and deliberately unusable by AMD engineers," according
9 to the arbitrator. The conduct was, in the arbitrator's words, "inexcusable and
10 unworthy." Moreover, this conduct was not isolated. Intel elsewhere tried to
11 "sabotage" AMD products, engaged in "corporate extortion" and demonstrated a near-
12 malevolent determination "to use all of its economic force and power on a smaller
13 competitor to have its way."

14 25. In 1984, in another underhanded effort to stifle AMD's business, Intel
15 decided that notwithstanding the Agreement, Intel would become the sole source for
16 the promising 80386 chip. To fully realize its objective, Intel engaged in a scheme to
17 mislead AMD and the public into erroneously believing that AMD would be a second
18 source for this chip product, thereby keeping AMD in the Intel "competitive camp" for
19 years.

20 26. This strategy served a broader purpose than simply preventing AMD
21 from competing with Intel. Customers' perception that AMD would continue to serve
22 as Intel's authorized second source was essential to Intel's aim of entrenching the x86
23 family of microprocessors as the industry standard — just as it had been essential to
24 IBM's original introduction of the PC. Intel was well aware that if computer
25 manufacturers knew Intel intended to sole source its 32-bit product, they would be
26 motivated to select alternative products produced by companies offering second
27 sources. Intel could not preserve the appearance that AMD would second source the
28 386 if it terminated the contract or otherwise disclosed its actual intent. Thus, Intel

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1 stalled negotiations over product exchanges, while at the same time allowing AMD to
2 believe that it could ultimately obtain the 386. This injured competition by deterring
3 and impeding serious competitive challenges to Intel and directly injured AMD by
4 depriving it of the revenues and profits it would have earned from such a challenge.

5 27. Intel implemented this secret plan for the purpose of acquiring and
6 maintaining an illegal monopoly in the x 86 lines of microprocessors, which it did by at
7 least 1987. As was its plan, Intel's conduct drained AMD's resources, delayed AMD's
8 ability to reverse-engineer or otherwise develop and manufacture competitive
9 products, and deterred AMD from pursuing relationships with other firms. In so doing,
10 Intel wrongfully secured the benefit of AMD's marketing skills and talent in support of
11 the x 86 lines of microprocessors and related peripherals and secured the benefit of
12 substantial competitively sensitive AMD information regarding its product
13 development plans. When AMD petitioned to compel arbitration in 1987 for Intel's
14 beach and bad faith, the arbitrator took notice of Intel's anticompetitive design: "In
15 fact, it is no fantasy that Intel wanted to blunt AMD's effectiveness in the
16 microprocessor marketplace, to effectively remove AMD as a competitor."

17 28. In 1992, after five years of litigation, the arbitrator awarded AMD more
18 than \$10 million in damages, prejudgment interest, and a permanent, nonexclusive
19 and royalty-free license to any Intel intellectual property embodied in AMD's own 386
20 microprocessor, including the x86 instruction set. Confirmation of the award was
21 upheld by the California Supreme Court two years later. In bringing the litigation to a
22 close, the arbitrator hoped that by his decision, "the competition sure to follow will be
23 beneficial to the parties through an expanded market with appropriate profit margins
24 and to the consumer worldwide through lower prices."

25 ***AMD Moves From Second Source To Innovator***

26 29. Shortly after confirmation of the award, AMD settled its outstanding
27 disputes with Intel in a 1995 agreement which gave AMD a shared interest in the x86
28 instruction set, but required AMD to develop its own architecture to implement those

1 instructions. The settlement also had the unintended benefit of forcing AMD to
 2 reinvent itself. Beginning in the late 1990s, AMD committed its resources to
 3 innovation and differentiation. Going its own way proved beneficial: AMD's first x86
 4 chip without Intel pin-compatibility, the Athlon microprocessor, delivered in 1999,
 5 marked the first (but not last) time AMD was to leapfrog Intel technologically and beat
 6 it to market with a new generation Windows microprocessor (and to break the 1 GHz
 7 speed barrier in the process).

8 30. Four years later, AMD introduced an extension of x86 architecture that
 9 took Windows processors into the realm of 64-bit computing. Unlike Intel, which
 10 invested billions in its Itanium microprocessor and a new, unique 64-bit proprietary
 11 instruction set (which, because it was proprietary, would have been a game-ending
 12 development for AMD had it become the industry standard), AMD undertook to
 13 supplement the x86 instructions to accommodate 64-bit processing while allowing 32-
 14 bit software to be run as well. AMD's efforts culminated in April 2003 when it brought
 15 to market its Opteron microprocessor for servers (the workhorse computers used by
 16 businesses to run corporate networks, e-commerce websites, and other high-end,
 17 computationally-intense applications). Opteron was the industry's first x86 backward
 18 compatible 64-bit chip. Six months later, AMD launched the Athlon64, a backward
 19 compatible 64-bit microprocessor for desktops and mobile computers.

20 31. The computing industry hailed AMD's introduction of 64-bit computing as
 21 an engineering triumph. Said Infoworld its August 27, 2004 issue,

22 You just gotta love a Cinderella story. . . . AMD's rapid rise
 23 from startup to \$5 billion semiconductor powerhouse is, as
 24 Humphrey Bogart's English teacher once said, the stuff of
 25 which dreams are made. . . . In the process, AMD has
 26 become known as the company that kept Intel honest, the
 27 Linux of the semiconductor world. . . . After decades of
 28 aping Intel architectures, the AMD64 architecture, rooted in
 Opteron and Athlon 64 processors, has actually been
 imitated by Intel in the form of Nocona, Intel's 64-bit version
 of Xeon. In a stunning reversal of fortune, Intel was forced
 to build that chip because Opteron was invading a server
 market that the Intel titanium was supposed to dominate.

1 32. In what represented a paradigm shift in the microprocessor world,
2 Microsoft endorsed AMD's 64-bit instruction set and announced that Windows would
3 support it. As noted by InfoWorld, Intel then copied AMD's technology for its own 64-
4 bit offerings — an event that confirmed AMD's technological emergence.

5 33. AMD has since extended its AMD64 technology to the balance of AMD's
6 microprocessor line-up (which now includes AMD Athlon 64, AMD Athlon 64 FX,
7 Mobile, AMD Athlon 64, AMD Sempron, and AMD Turion64 products). Owing also to
8 AMD's innovations in dual-core processors and its introduction of an improved
9 architecture that speeds up microprocessor communications with memory and
10 input/output devices, AMD has advanced as a technological leader in the
11 microprocessor industry. Its innovation has won for it over 70 technology leadership
12 and industry awards and, in April 2005, the achievement of being named Processor
13 Company of 2005" at, an Intel-sponsored industry awards show.

14 34. Tellingly, however, AMD's market share has not kept pace with its
15 technical leadership. Intel's misconduct is the reason. Intel has unlawfully
16 maintained its monopoly and has systematically excluded AMD and other competitors
17 from any meaningful opportunity to compete for market share by preventing the
18 companies that buy chips and build computers from freely deploying processors sold
19 by AMD and other competitors; by relegating AMD and other competitors to the low-
20 end of the market; by preventing AMD and other competitors from achieving the
21 minimum scale necessary to become a full-fledged, competitive alternative to Intel;
22 and by erecting impediments to competitors' ability to increase productive capacity for
23 the next generation of microprocessors.

24 35. In addition to AMD, no other chip manufacturer has been able to
25 successfully compete with Intel as a result of its anti-competitive acts as described
26 herein.

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1 THE x86 PROCESSOR INDUSTRY

2 *Competitive Landscape*

3 36. The x86 versions of Windows and Linux, the two operating systems that
4 dominate the business and consumer computer worlds, have spawned a huge
5 installed base of Windows- and Linux-compatible application programs that can only
6 run on the x86 instruction set. This has given Intel effective ownership of personal
7 computing. Although other microprocessors are offered for sale, the non-x86
8 microprocessors are not reasonably interchangeable with x86 microprocessors
9 because none can run the x86 Windows or Linux operating systems or the application
10 software written for them.

11 37. The relevant product market is x86 Microprocessors, because a putative
12 monopolist in this market would be able to raise the prices of x86 Microprocessors
13 above a competitive level without losing so many customers to other microprocessors
14 as to make this impractical. While existing end-users can theoretically shift to other
15 operating-system platforms, high switching costs associated with replacing existing
16 hardware and software make this impractical. Further, the number of new, first-time
17 users who could choose a different operating-system platform is too small to prevent
18 an x86 Microprocessor Chip monopolist from imposing a meaningful price increase
19 for a non-transitory period of time. Computer manufacturers would also encounter
20 high switching costs in moving from x86 Microprocessor Chips to other architectures
21 and no major computer maker has ever done it. In short, demand is not cross-elastic
22 between x86 Microprocessor Chips and other microprocessors at the competitive
23 level.

24 38. The relevant geographic market for x86 microprocessors is essentially
25 worldwide. Intel and its competitors compete globally; PC platform architecture is the
26 same from country to country; microprocessors can be, and frequently are, easily and
27 inexpensively shipped around the world; and the potential for arbitrage prevents
28 chipmakers from pricing processors differently in one country than another.

1 39. Intel dominates the worldwide x86 Microprocessor Market. According to
2 published reports, over the past several years, Intel has consistently achieved more
3 than a 90% market share measured by revenue, while AMD's revenue share has
4 remained at approximately 9%, with all other microprocessor manufacturers relegated
5 to approximately 1%. Intel has captured at least 80% of x86 Microprocessor Chips
6 sales in seven of the last eight years. Since 1999, AMD's worldwide volume share
7 has hovered at 15%, only once penetrating the 20% level. The following chart
8 illustrative:

x86 Worldwide CPU Unit Market Share

	1997	1998	1999	2000	2001	2002	2003	2004
10								
11	Intel	85.0%	80.3%	82.2%	82.2%	78.7%	83.6%	82.8%
12	AMD	7.3%	11.9%	13.6%	12.6%	20.2%	14.9%	15.5%
13	Others	7.5%	7.9%	4.2%	1.1%	1.1%	1.4%	1.7%

14 40. Intel's x86 family of microprocessors no longer faces any meaningful
15 competition other than from AMD. National Semiconductor acquired Cyrix in 1997
16 but shuttered it less than two years later. At the beginning of this year only two other
17 x86 chip makers remained - Via Technologies, Inc. and Transmeta Corporation –
18 which together account for less than 2% of the market. Transmeta has since
19 announced its intention to cease selling x86 microprocessors, and Via faces dim
20 prospects of growing its market share to a sustainable level.

21 | Customers For x86 Microprocessors

22 41. Intel is shielded from new competition by huge barriers to entry. A chip
23 fabrication plant ("fab") capable of efficiently mass-producing x86 microprocessors
24 carries a price tag of at least \$2.5 to \$3.0 billion. In addition, any new market entrant
25 would need the financial wherewithal to underwrite billions more in research and
26 development costs to design a competing x86 microprocessor and to overcome
27 almost insurmountable IP and knowledge barriers.

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1 42. Annual worldwide consumption of x86 Microprocessor Chips currently
 2 stands at just over 200 million units per year and is expected to grow by 50% over the
 3 remainder of the decade. Relatively few microprocessors are sold for server and
 4 workstation applications (8.75 million in 2004), but these command the highest prices.
 5 Most x86 Microprocessor Chips are used in desktop PCs and mobile PCs, with
 6 desktops currently outnumbering mobiles by a margin of three to one. Of the total
 7 worldwide production of computers powered by x86 Microprocessor Chips, 32% are
 8 sold to U.S. consumers: U.S. sales of AMD-powered computers account for 29% of
 9 AMD's production; California accounts for as much as 20-25% of end-users.

10 43. The majority of x86 Microprocessor Chips are sold to a handful of large
 11 OEMs (original equipment manufacturers), highly visible companies recognized
 12 throughout the world as the leading computer makers. Regarded by the industry as
 13 "Tier One" OEMs over most product categories are: Hewlett-Packard ("HP"), which
 14 now also owns Compaq Computer; Dell, Inc.; IBM, which as of May 1, 2005, sold its
 15 PC (but not server) business to Lenovo; Gateway/eMachines; and Fujitsu/Fujitsu
 16 Siemens, the latter a Europe-based joint venture. Toshiba, Acer, NEC and Sony are
 17 also commonly viewed as Tier One OEMs in the notebook segment of the PC market.
 18 HP and Dell are the dominant players, collectively accounting for over 30% of
 19 worldwide desktop and mobile sales, and almost 60% of worldwide server sales.
 20 Both are U.S.-based companies, as are IBM and Gateway/eMachines; and all but
 21 Gateway have U.S. manufacturing operations (as does Sony, which operates a North
 22 American production facility in San Diego).

23 44. Worldwide, the Tier One OEMs collectively account for almost 80% of
 24 servers and workstations (specialty high-powered desktops), more than 40% of
 25 worldwide desktop PCs, and over 80% of worldwide mobile PC's. According to
 26 industry publications, unit market share in 2004 among the Tier One OEMs was as
 27 follows:

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CEM Market shares – 2004				
	Company	Server/WS	Desktop	Mobile
2	Hewlett-Packard	29.86%	13.69%	16.23%
3	Dell	28.34%	16.18%	17.27%
4	IBM/Lenovo	14.46%	3.69%	9.20%
5	Fujitsu/Siemens	3.70%	2.83%	6.88%
6	Acer	0.81%	1.85%	8.53%
7	Toshiba	0.31%	0.05%	12.73%
8	NEC	2.06%	2.02%	4.50%
9	Sony	--	0.76%	4.23%
10	Gateway/eMachines	0.16%	2.48%	1.45%
11	Total	79.70%	43.55%	81.02%

13 45. The balance of x86 production is sold to smaller system builders and to
 14 independent distributors. The latter, in turn, sell to smaller OEMs, regional computer
 15 assemblers, value-added resellers, and other, smaller distributors.

16 46. OEMs have adopted a variety of business models, including direct sales
 17 to customers through web-based e-commerce, sales through company-employed
 18 sales staffs (who target IT professionals and Fortune 1000 companies) and sales
 19 through a network of independent distributors (who focus on smaller business
 20 customers). With the exception of Dell, which markets to consumers only directly
 21 (mostly over the Internet), most OEMs also sell their products through retail chains.
 22 Intel and its competitors compete not only to have OEMs incorporate their
 23 microprocessors into their retail platforms but also to convince retailers to allocate
 24 shelf-space so that the platforms containing their respective microprocessors can be
 25 purchased in the retailers' stores.

26 47. Through its economic muscle and relentless marketing – principally its
 27 "Intel Inside" and "Centrino" programs, which financially reward OEMs for branding
 28 their PCs as Intel machines – Intel has transformed the OEM world. While once

1 innovative companies themselves, the OEMs have largely become undifferentiated
 2 distributors of the Intel platform, offering "Intel Inside" and "Centrino" computers
 3 largely indistinguishable from those of their rivals. As their products have become
 4 commoditized, the Tier One OEMs operate on small or negative margins and the
 5 overwhelming portion of PC profit flows to Intel.

6 48. This profit drain has left OEMs and others in the distribution chain in a
 7 quarter-to-quarter struggle to eke out even a modest return on their assets, thereby
 8 making them continually susceptible to Intel's economic coercion, which is described
 9 below.

INTEL'S UNLAWFUL PRACTICES

10 49. Intel has maintained its x86 microprocessor monopoly by deploying a
 11 host of financial and other exclusionary business strategies that in effect limit its
 12 customers' ability or incentive to deal with Intel's competitors. Although differing from
 13 customer to customer and segment to segment, the Intel arsenal includes direct
 14 payments in return for exclusivity and near-exclusivity; discriminatory rebates,
 15 discounts and subsidies conditioned on customer "loyalty" that have the practical and
 16 intended effect of creating exclusive or near-exclusive dealing arrangements; threats
 17 of economic retaliation against those who give, or even contemplate giving, too much
 18 of their business to Intel's competitors; and misuse of industry standards-setting
 19 processes so as to disadvantage competitors' products in the marketplace, thus
 20 increasing costs to consumers of x86 Microprocessor Chips and products containing
 21 such chips – including those purchased by Plaintiff and the other members of the
 22 Class.

23 50. Intel's has targeted both U.S. and offshore customers at all levels to
 24 prevent competitors from building market share anywhere, with the goal of stifling
 25 competitors and keeping Intel's customers dependent on Intel for very substantial
 26 amounts of product. In this way, OEMs remain vulnerable to continual threats of Intel
 27 retaliation, competitors remain capacity-constrained, the OEMs remain Intel-

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1 dependent, and Intel thereby perpetuates its economic hold over them, allowing it to
 2 continue to demand that customers curtail their dealings with competitors. The cycle
 3 repeats itself: by unlawfully exploiting its existing market share, Intel impedes the
 4 growth of competitors, thereby laying a foundation for the next round of foreclosing
 5 actions with the effect that competitors' ability to benefit from their current
 6 technological advances is curtailed to the harm of consumers – including Plaintiff and
 7 the other members of the Class.

8 **1) Practices Directed At OEMs**

9 a. **Exclusive and Near-Exclusive Deals**

10 51. **Dell.** In its history, Dell has not purchased a single AMD x86
 11 Microprocessor Chip despite acknowledging Intel's shortcomings and customers'
 12 requests for AMD solutions, principally in the server sector. As Dell's President and
 13 CEO, Kevin Rollins, publicly stated in February 2005:

14 Whenever one of our partners slips on either the economics
 15 or technology, that causes us great concern. . . . For a
 16 while, Intel admittedly slipped technologically and AMD had
 made a step forward. We were seeing that in customer
 response and requests.

17 52. Nonetheless, Dell has been and remains Intel-exclusive. According to
 18 industry reports, Intel has secured Dell's exclusivity with outright payments and
 19 favorable discriminatory pricing and service. In discussions about buying from AMD,
 20 Dell executives have conceded that they must financially account for Intel retribution
 21 in negotiating pricing from AMD.

22 53. **Sony.** With the introduction of its Athlon microprocessor in 1999, AMD
 23 began to make notable inroads into Intel's sales to major Japanese OEMs, which
 24 export PCs internationally including into California and the U.S. By the end of 2002,
 25 AMD had achieved an overall market share of approximately 22% to the major
 26 Japanese OEMs. To reverse the erosion of its business, in 2003 Intel paid Sony
 27 multi-million dollar sums, disguised as discounts and promotional support, in
 28 exchange for absolute microprocessor exclusivity. Sony abruptly cancelled an AMD

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